IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.Appeal No.574 of 2002

Decided on: January 9, 2006.

State of Himachal Pradesh **…Appellant.**

VERSUS

Gian Chand **….Respondent.**

Coram

The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for reporting? No.

For the Appellant: **Mr. J.S. Guleria, Law Officer.**

For the respondent: **Mr. B.N. Gupta, Advocate.**

Deepak Gupta, Judge (Oral)

This appeal has been filed by the State.

2. The respondent-accused is present in Court alongwith Shri B.N. Gupta, Advocate. The accused was convicted under Section 61(1)(a) of the Punjab Excise Act as applicable to Himachal Pradesh (hereafter referred to as 'the Act') for having in his possession 30 litres of illicit liquor. He was sentenced to six months imprisonment and to pay fine of Rs.1,000/-. Appeal was filed by the accused before the learned Sessions Judge, Mandi, which was transferred to the learned Additional Sessions Judge, Mandi. The said appeal was partly allowed. The conviction was upheld. However, the sentence was reduced to simple imprisonment till the rising of the Court. Against that judgment, the State has filed the

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Whether reporters of the local papers may be allowed to see the Judgment? Yes.

present appeal and the contention of the State is that the appellate Court has no jurisdiction to impose sentence less than six months which is the minimum sentence provided under the Act.

3. It would be pertinent to mention that vide Notification dated 28.7.2004, Section 61 of the Act has been amended and now the amended portion reads as follows:

> **"**(a) for sub-section (1), the following shall be substituted, namely:-
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> "(1) Notwithstanding anything contained in sub-section (1) of section 61, any offence, whether committed before or after the commencement of the Punjab Excise (Himachal Pradesh) Amendment Act, 2004, relating to the import, export, transport or possession upto 100 litres of lahan or upto 45 bulk litres of liquor may either before or after the institution of the prosecution, be compounded by the Judicial Magistrate of the first Class or by the excise officers of the first Class (not below the rank of Assistant Excise and Taxation Commissioner) within their respective jurisdiction for an amount which shall not be less than three thousand rupees but shall not exceed twenty five thousand rupees:
>
> Provided that the excise officers of the first Class (not below the rank of Assistant Excise and Taxation Commissioner) shall compound the offence under this sub-section, where it relates to the quantity of lahan upto 60 litres or upto 18 bulk litres of liquor, before the institution of the prosecution".**"**

4. It is clear that this amendment applies to the pending cases also. Mr. B.N. Gupta, learned counsel appearing on behalf of

the respondent-accused, on instructions received from accused Gian Chand, who is present in Court, states that his client is willing to compound the matter. The accused already stands convicted of the offence. In my opinion, the amendment made to Section 61 of the Act is applicable to the facts of the present case. Therefore, it is a fit case where the accused should be granted permission to compound the matter. The matter is permitted to be compounded.

5. The accused admits the commission of the offence. He is directed to pay a fine of Rs.5,000/- in addition to Rs.1,000/-, which has already been deposited by him. He shall deposit this fine on or before 28th February, 2006. In case the fine of Rs.5,000/- is not deposited by the said date, then the accused shall have to undergo the minimum sentence of six months. The amount of fine be deposited with the trial Court.

6. The appeal stands disposed of.

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January 9, 2006(sd) **(Deepak Gupta), J.**